



COMPLAINTS AGAINST PERSONNEL

Directive 5 - 102

Date of Issue: July 2013 Amends/Cancel: Chapter V Sec 3

I. PURPOSE

The purpose of this Directive is to establish a process for investigating complaints against personnel.

II. POLICY

It is the policy of the Department of General Services Maryland Capitol Police (DGS-MCP) to investigate all complaints lodged against DGS-MCP employees.

III. DEFINITIONS

A. For the purpose of this Directive, the following definitions will apply:

1. **Administrative Investigations:** Any inquiry initiated by command or supervisory personnel of DGS-MCP into alleged inappropriate or wrongful actions of another employee, which inquiry is intended to lead to an objective finding.
2. **Adverse Material:** "A law enforcement agency may not inset any adverse material into any file of the officer, except the file of the internal investigation or the intelligence division, unless the officer has an opportunity to review, sign, receive a copy of, and comment in writing upon the adverse material, unless the officer waives these rights".
3. **AFSCME:** American Federation of State and County Municipal Employees.
4. **Brutality:** Is considered to include any situation wherein a law enforcement officer, while acting in his official capacity, resorts to the use of force which is unnecessary in its origin and application; or if force is deemed necessary, is excessive in its application.
4. **Complaint:** An allegation of misconduct or a violation of DGS-MCP rules of conduct, policy, or procedures against an employee of DGS-MCP.
5. **Complainant:** The aggrieved person, a member of the aggrieved person's immediate family, or a parent or guardian in the case of a minor child, or any person with firsthand knowledge obtained through his presence at and observation of the alleged incident.
6. **Counseling:** Supervisory counseling of subordinates is non-disciplinary action.
7. **Emergency Suspension:** A temporary suspension of police powers imposed against a *law enforcement officer*, with or without loss of compensation by a supervisory officer superior in rank when it appears that such action is in the best interest of the public and DGS-MCP.

8. **Formal Hearing:** Any proceeding conducted by a Hearing Board for the purpose of taking or adducing the testimony or receiving other evidence in connection with charges filed against a DGS-MCP Law Enforcement Officer employee.
9. **DGS:** The Department of General Services.
10. **DGS-MCP:** The Department of General Services Maryland Capitol Police
11. **Hearing Board:** A board authorized to conduct a hearing on a complaint against a *law enforcement officer*. Members of a board will be selected from the total complement of the DGS-MCP Police Officers or from another agency with the approval of the chief of that agency. Board members may not have participated in the investigation or interrogation of the accused law enforcement officer.
12. **Incompetence:** Evidence of incompetence may include, but need not be limited to, a history of poor performance appraisals and promotional potential ratings; an aggregate of infractions of DGS-MCP Police rules, regulations, procedures, directions or others; a demonstrated lack of knowledge of the application of laws required to be enforced; an unwillingness or inability to perform assigned tasks; failure to conform to work standards established for the employee's rank or position; negligence resulting in duties not being performed or performed in an unacceptable manner; failure to take appropriate action on the occasion of a crime, disorder, or other condition deserving police attention; absence without leave; unnecessary absence from the assigned patrol or place of work during a tour of duty. The repeated inability to perform assigned duties due to physical incapacitation brought about by an employee's excessive use of alcohol shall also be considered evidence of incompetence.
13. **Law Enforcement Officer:** Any employee of the Department of General Services, who in his official capacity, is authorized by law to make arrests but not including any law enforcement officer serving in a probationary status, except when allegations of brutality in the execution of his duties are made.
14. **LEOBR:** Law Enforcement Officer's Bill of Rights.
15. **Loss of Police Powers:** The act by which a police employee of DGS-MCP is temporarily deprived of the powers and immunities granted him as a law enforcement officer.
16. **Non-Enforcement Duty Status:** The status during which a police employee of DGS-MCP is temporarily deprived of the powers and immunities granted to him as a law enforcement officer. For purposes of compensation, he shall retain his status as an employee of DGS but shall be assigned administrative, clerical or other non-enforcement duties.
17. **Not-sustained:** The investigation fails to disclose sufficient evidence to clearly prove the allegations made in the complaint – includes unfounded, exonerated, and not-involved.
18. **Party:** The accused, his representative or the prosecutor.

19. **Penalties:** Except for summary punishment, the final disciplinary authority rests with the Chief of Police. Any Detachment Commander or Hearing Board may recommend disciplinary action. Recommended penalties may include but are not limited to:
- a. Written Reprimand
 - b. Loss of Leave
 - c. Fine
 - d. Suspension
 - e. Other action which would be considered a punitive measure
 - f. Loss of Police Powers
 - g. Demotion
 - h. Dismissal
20. **Police Communications Operators:** Provides responsible communications and clerical work in a Detachment Communications Center.
21. **Police Employee:** See Law Enforcement Officer.
22. **Security Officers:** The classification responsible for protecting the safety and security of persons, equipment, and facilities on state property.
23. **Summary Punishment:** Formal disciplinary action may be taken for minor violations.
- a. The police officer accepts the punishment recommended by his Commander.
 - b. The facts which constitute the minor violation are not disputed.
 - c. The police employee waives the formal hearing by completing the Notification of Charges/Waiver of LEOBR and Acceptance of Summary Punishment.
24. **Suspension:** The penalty by which an employee is, for the purposes of compensation, deprived of his status as an employee of DGS for one or more consecutive calendar days. Consecutive days may be interrupted as required, by mandatory appearances before courts, regulatory agencies or administrative bodies.
25. **Sustained:** A finding that an investigation disclosed sufficient evidence to substantiate the allegations made in the complaint.

IV. PROCEDURES

A. CITIZEN COMPLAINT PROCESSING

All citizen complaints, originating outside of the Department of General Services, against employees of DGS-MCP shall be processed as follows:

1. The employee first acquiring knowledge of the complaint will immediately notify the Shift Supervisor.
2. The Shift Supervisor will obtain and document all information regarding the complaint and by most expeditious means notify the Detachment Commander if such notification is immediately warranted. The Shift Supervisor may assign personnel to initiate an immediate investigation if such is warranted.
3. Detachment Commanders will determine the appropriate course of action.
4. Verbal complaints of misconduct by citizens will be documented by the receiving officer. Serious complaints should be supported by a written statement by the complainant. If the complainant, and the allegation, if factual, would constitute misconduct, the receiving officer will document the complaint in writing.
5. All alleged actions of misconduct or violations of any rule, policy, or procedure must be investigated and the results of such investigation acted upon, consistent with a commander's prerogative to disregard trivial or chronic complaints which he deems unsubstantiated.
 - a. Nothing precludes DGS-MCP from investigating allegations against employees from whatever source received; consistent with the law when it is determined that such investigation is in the best interest of the Department.
 - b. Anonymous complaints should not, per se, be excluded from investigation. Efforts should be made to gain the cooperation of the complainant. Many anonymous complaints, by their very nature are difficult to substantiate; yet this should not preclude a preliminary inquiry into the matter. Where possible, a preliminary investigation into the complaint will be made. The investigation will be terminated when no additional evidence can be obtained.
6. Complaints received at the Secretary level will be forwarded to the Chief of Police for investigation.

B. DGS EMPLOYEE COMPLAINT PROCESSING

1. Any employee desiring to file a complaint against another employee of the DGS-MCP of the same superior rank or classification may submit the complaint directly to their Detachment Commander. Such complaints must be submitted in writing and signed by the employee initiating the complaint.
2. Any employee desiring to file a complaint against another employee of DGS-MCP, of lower rank or classification, not assigned to the complainant's detachment, may submit the complaint directly to the employee's commander. Such complaints must be submitted in writing.

C. BRUTALITY COMPLAINT PROCESSING

1. A complaint against a law enforcement officer, alleging brutality in the execution of his duties, may not be investigated unless the complaint is duly sworn to by any person with first hand knowledge obtained through presence at and observation of the alleged incident, or by the parent or guardian in the case of a minor child, before an official authorized to administer oaths. An investigation which could lead to disciplinary action for brutality may not be initiated and an action may not be taken unless the complaint is filed within ninety days of the alleged brutality.
2. When a complainant fails to swear to a brutality complaint, he will be advised that pursuant to law, the DGS-MCP may not investigate an allegation of brutality unless sworn to, and an effort will be made to obtain the cooperation of the complainant. If the complainant still refuses to swear to the complaint of brutality and the allegation, if factual, would constitute misconduct, the receiving officer will document the complaint. The report will contain a notation that the complainant refused to swear to the complaint of brutality and will allege a specific act of misconduct other than brutality, e.g. unbecoming conduct, mistreatment of persons in custody, unnecessary use of force, etc. Such complaints will be processed in the same manner as other citizen complaints.

D. DISCIPLINARY ACTIONS – ALL EMPLOYEES

1. Before taking disciplinary action against an employee, Detachment Commander will be certain that:
 - a. The problem is documented in writing.
 - b. The police employee is provided a completed Notification of Complaint/Waiver of Rights DGS-MCP Form 178 prior to requesting a written report, and the opportunity to consult with counsel or other responsible representative of his choice prior to submitting the report. The Form 178 should clearly state that the recipient is the subject of an investigation, and clearly include the nature of the investigation.
 - c. A detailed report is obtained from the employee, if necessary.
 - d. A supervisor has obtained additional information when needed and either prepared a report or an endorsement to the employee's report assessing essential facts and identifying chargeable violations that have been substantiated.
2. Notifications of Charges, DGS-MCP Form 181, will be completed for the police employees. Each charge will be supported by a reference to a rule of conduct or a policy or procedure in the DGS-MCP Directive Manual or to some other official order or directive of the Department of General Services. Each violation or charge must be numbered sequentially and referred to by number in all related documents.
3. The charge should describe only the offense committed; portions of the rule, procedure, or directive containing irrelevant or extraneous language will not be cited. For example, employees are prohibited from divulging information or acting as an official spokesman for DGS in matters affecting the official business of the Department without prior approval. Supposing an employee had given investigative information to the local newspaper without first obtaining permission and

as a result, his commander chose to initiate disciplinary action, the test of the charge being brought against the employee should appear as follows: "An employee shall not ... divulge investigative information ... either in an official or unofficial capacity without first having obtained permission from his commanding officer." The charge addresses the specific offense committed by the employee and excludes other offenses included within the rule but not relevant to the case.

4. All time limitations of LEOBR or State Personnel Rules have been complied with.
5. The facts of the case will be reviewed in depth by the Detachment Commander. The Chief of Police or his designee will be notified and a determination will be made whether or not to proceed with any disciplinary actions.

E. FORMAL COUNSELING OF EMPLOYEES

1. Inappropriate behavior or minor infractions of policy by an employee which if continued or repeated may result in disciplinary action will be documented by using DGS Counseling Memorandum, at a formal counseling session.
2. As a general rule, a formal counseling session will be held as soon as possible following such inappropriate behavior or the conclusion of an investigation disclosing a minor infraction of rules and policy. The session may be conducted by the person assigned as the employee's supervisor at the time of infraction or may be conducted by the employee's commander with the employee's supervisor at the time of infraction or may be or may be conducted by the employee's commander with the employee's supervisor present. The particular incident will be discussed with the employee, pointing out the deficiencies in the employee's actions. The employee will be given the opportunity to state his views on the matter and to suggest corrective action to prevent future occurrences. At the completion of the counseling session, the employee's supervisor or commander will recommend a course of action designed to help the employee improve in the specific areas addressed or avoid recurrence.
3. Supervisory counseling of subordinates is an instructional communication and is not a disciplinary action.

F. RECORDS AND FILES

1. A complaint Against Personnel Master File, titled for the purposes of the Law Enforcement Officer's Bill of Rights, the "Internal Investigation File," will be securely maintained by the DGS Personnel Division in case control number sequence. The file will contain the following:
 - a. Complaint Against Personnel Master Ledger containing the following:
 - 1) Case Control Number
 - 2) Name of employee involved
 - 3) Date and time received
 - 4) Name of complainant
 - 5) Nature of complaint
 - 6) Date and time of incident
 - 7) Final disposition

- b. Copies of Complaint against Personnel Reports and all related investigative reports and forms concerning findings.
- 2. In determining whether any portions of a file should be excluded from review, one must consider whether the disclosure of that portion of the investigation would:
 - a. Interfere with a valid and proper law enforcement proceeding.
 - b. Deprive another person of a right to a fair trial or to an impartial adjudication.
 - c. Constitute an unwarranted invasion of personal privacy.
 - d. Disclose the identity of a confidential source
 - e. Disclose investigative techniques and procedure.
 - f. Prejudice an ongoing investigation.
 - g. Endanger the life or safety of any person.
- 3. The investigative files maintained by DGS- MCP CID are available for review, but only to the employee who is the principal in an investigation and those who supervise that employee's work.
- 4. All records, forms, files, correspondence and related material that are part of an administrative investigation are confidential. Only those personnel concerned with the actual process of the administrative hearing and report review shall have access to information developed during an investigation. Inquiries from the news media or other interested persons concerning routine Department disciplinary matters will be referred to the DGS Public Information Unit.
- 5. Law enforcement Officer's Bill of Rights provides that a law enforcement officer, upon written request, may have any record of a formal complaint made against him expunged from any file if:
 - a. the officer has been exonerated of all charges in the complaint or the charges are determined to be unsustainable or unfounded; and
 - b. three years have passed since the findings were rendered by the law enforcement agency.
- 6. A letter of disposition will be forwarded to DGS Personnel on any CAPS that results in the administering of discipline.